

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA CR 07-778

AVERY EDWARDS

January 16, 2008

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
POPE COUNTY
[NO. CR-2005-9]

V.

STATE OF ARKANSAS

HONORABLE DENNIS C. SUTTERFIELD,
CIRCUIT JUDGE

APPELLEE

AFFIRMED; MOTION TO BE RELIEVED
GRANTED

This is an appeal from an order revoking appellant Avery Edward's probation and sentencing him to twenty-four months' imprisonment with an additional thirty-six months suspended. Appellant's counsel has filed a no-merit brief and a motion to be relieved of counsel, asserting that there is no non-frivolous argument to be made in support of an appeal, pursuant to *Anders v. California*, 386 U.S. 738 (1967) and Ark. Sup. Ct. R. 4-3(j)(1) (2007). The clerk of this court attempted to send a certified copy of appellant's brief and motion to be relieved to appellant, informing him that he had the right to file pro se points for reversal, but the post office was unable to effect delivery. Repeated attempts to deliver the packet to the

address provided by appellant's counsel were unsuccessful, and the packet was "unclaimed." Therefore, there are no pro se points for reversal to consider on appeal.

On April 12, 2005, appellant pled guilty to charges of theft of property and was sentenced to five years' probation. As a condition of probation, appellant was ordered to report to his supervising probation officer. Appellant was also ordered to pay restitution, costs, and fines at a rate of \$25 per month. On December 6, 2005, appellant was found guilty of violating the terms of his probation by committing new crimes, and he was ordered to serve 270 days in a regional punishment facility. After his release, appellant was to satisfy the conditions set out in the original order of probation, and all conditions were to remain in full force.

On November 29, 2006, the State filed a petition to revoke appellant's probation, alleging appellant had failed to report to his probation officer and failed to pay probation fees and court payments. A hearing was held on April 23, 2007, at which appellant's parole officer testified that appellant had failed to report for several months in 2006 and was delinquent in his payments. Appellant also testified and admitted that he had failed to report, explaining that "I was just working and everything ... paying bills and all that." Appellant also testified that he had gone to West Helena after his brother passed away, which prevented him from reporting, although he did allege that he had called his probation officer. Appellant also admitted that he had been delinquent in his payments, but he asserted that he was now current except for a \$50 payment now due. The court found that the State had proven by a preponderance of the evidence that appellant had violated the conditions of his probation,

noting that appellant admitted as much on the stand.

Appellant's counsel correctly argues that the only ruling below adverse to appellant was the decision to revoke, and counsel asserts that because appellant admitted to the violations, the trial court properly revoked appellant's probation. We agree that appellant's own testimony provided sufficient evidence to support revocation, and we affirm the revocation and grant counsel's motion to be relieved.

Affirmed; motion to be relieved granted.

HART and MILLER, JJ., agree.